

OPEN MEETING ITEM



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COMMISSIONERS
KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

SECURITIES DIVISION
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ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Kristin K. Mayes, Chairman
Gary Pierce
Paul Newman
Sandra D. Kennedy
Bob Stump

Arizona Corporation Commission

DOCKETED

SEP 28 2010

FROM: Matthew J. Neubert
Director of Securities

DOCKETED BY

DATE: September 14, 2010

RE: *In re Carol Dee Aubrey, Progressive Energy Partners, L.L.C., et al.,*
Docket No. S-20723A-10-0042

CC: Ernest G. Johnson, Executive Director

Please find attached a proposed default Order to Cease and Desist, Order of Restitution and Order for Administrative Penalties ("Order"). The Order finds that from December 21, 2005, to 2008 respondents Progressive Energy Partners, L.L.C. ("PEP"), Progressive Energy Partners, L.L.C. #1 ("PEP#1"), Progressive Energy Partners, L.L.C. #2 ("PEP#2"), Progressive Energy Partners, L.L.C. #3 ("PEP#3"), Progressive Energy Partners, L.L.C. #4 ("PEP#4") and their managing member Carol Dee Aubrey ("Aubrey") issued and sold securities within Arizona in the form of investment contracts and limited liability company membership interests in the PEP entities ("Unit Investments") to 8 Arizona residents totaling \$218,750. Respondents made token repayments to 2 investors totaling \$5,034. Respondents sold the investments by making unsolicited telephone calls to Arizona residents.

The Order finds that respondents promised to use investor money to drill new oil and gas wells, and re-work existing ones on approximately 5,000 acres of land located in West Virginia. The Order finds that investors were led to believe that each full, \$25,000 Unit Investment would produce profits of approximately \$23,069 to \$31,377 during the first year of respondents' oil and gas business operations.

The Division filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and for Other Affirmative Action against respondents on February 4, 2010. The PEP entities were served with the Notice by certified mail through their statutory agent on March 25, 2010, and Aubrey was served by

publication on August 28, 2010. Respondents failed to file a request for hearing or an answer within the required time limits.

The Order finds that respondents violated A.R.S. §§ 44-1841 & 44-1842 of the Arizona Securities Act ("Act") by selling unregistered securities while not being registered as securities salesman or dealers, or exempt from registration. The Order also finds that Respondents committed 2 violations of the anti-fraud provision of the Act, A.R.S. § 44-1991.

The Order requires respondents to: (a) permanently cease and desist from violating the Act; (b) pay \$213,716 in restitution; (c) pay prejudgment interest on the restitution amount from the dates of the investment purchases totaling \$49,005; and (d) pay a \$50,000 administrative penalty.

The Division recommends the Order as appropriate, in the public interest and necessary for the protection of investors.

Originator: Mike Dailey

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 In the matter of

) DOCKET NO. S-20723A-10-0042

9 CAROL DEE AUBREY and JOHN DOE
10 AUBREY, husband and wife,

) DECISION NO. _____

11 PROGRESSIVE ENERGY PARTNERS,
12 L.L.C., a Nevada limited liability company,

) **ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION AND ORDER FOR
ADMINISTRATIVE PENALTIES AGAINST
RESPONDENTS:**

13 PROGRESSIVE ENERGY PARTNERS,
14 L.L.C. #1, a Nevada limited liability
company,

) **CAROL DEE AUBREY**

15 PROGRESSIVE ENERGY PARTNERS,
16 L.L.C. #2, a Nevada limited liability
company,

) **PROGRESSIVE ENERGY PARTNERS,
L.L.C.**

17 PROGRESSIVE ENERGY PARTNERS,
18 L.L.C. #3, a Nevada limited liability
company,

) **PROGRESSIVE ENERGY PARTNERS,
L.L.C. #1,**

19 PROGRESSIVE ENERGY PARTNERS,
20 L.L.C. #4, a Nevada limited liability
company,

) **PROGRESSIVE ENERGY PARTNERS,
L.L.C. #2,**

21 Respondents.

) **PROGRESSIVE ENERGY PARTNERS,
L.L.C. #3,**

) **PROGRESSIVE ENERGY PARTNERS,
L.L.C. #4**

22 **I.**

23 **FINDINGS OF FACT**

24 1. On February 4, 2010, the Securities Division ("Division") of the Arizona
25 Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding
26 Proposed Order to Cease, Order for Restitution, Order for Administrative Penalties and For Other
Affirmative Action ("Notice") against respondents CAROL DEE AUBREY ("AUBREY"),
PROGRESSIVE ENERGY PARTNERS, L.L.C. ("PEP"), PROGRESSIVE ENERGY PARTNERS,

1 L.L.C. #1 ("PEP#1"), PROGRESSIVE ENERGY PARTNERS, L.L.C. #2 ("PEP#2"),
2 PROGRESSIVE ENERGY PARTNERS, L.L.C. #3 ("PEP#3") and PROGRESSIVE ENERGY
3 PARTNERS, L.L.C. #4 ("PEP#4").

4 2. AUBREY, PEP, PEP#1, PEP#2, PEP#3 and PEP#4 may be referred to as
5 "RESPONDENTS."

6 3. On March 25, 2010, the Division mailed copies of the Notice to PEP, PEP#1,
7 PEP#2, PEP#3 and PEP#4 via certified mail, return receipt requested, to the commercial registered
8 agent for PEP, PEP#1, PEP#2, PEP#3 and PEP#4 called Paracorp, Inc. at 318 N. Carson St., #208,
9 Carson City, Nevada 89701. The mailing was signed for by "N. Gaches" of Paracorp on March
10 29, 2010.

11 4. On July 21, 2010, the Division filed the affidavit of Special Investigator Guy Phillips
12 in support of service the Notice on AUBREY by publication (the "Affidavit"). The Affidavit
13 establishes that: (a) the Division was unable to personally serve AUBREY with the Notice despite
14 substantial efforts; (b) the Division was unable to locate AUBREY's "current" address or residence;
15 and (c) that AUBREY's "last known" address or residence was 1661 Sirrine Dr., Santa Ana,
16 California 92705 located in Orange County, California. (See, Affidavit, ¶¶ A-T).

17 5. On August 30, 2010, the Division filed a Notice of Service by Publication
18 demonstrating that the Division published a detailed statement regarding the Notice, and these
19 administrative proceedings specifically directed towards AUBREY: (a) in the *Orange County*
20 *Reporter*, a newspaper of general circulation in Orange County, California once a week for four
21 consecutive weeks on July 28, 2010, August 4, 2010, August 11, 2010, and on August 18, 2010;
22 and (b) in the *Arizona Business Gazette*, a newspaper of general circulation in Maricopa County,
23 Arizona once a week for four consecutive weeks on July 29, 2010, August 5, 2010, August 12,
24 2010, and on August 19, 2010.

25 6. RESPONDENTS have not filed a request for hearing or an answer to the Notice.
26

1 7. At all times relevant, AUBREY resided in Costa Mesa, California. At all times
2 relevant, AUBREY conducted business within Arizona in her individual capacity, and on behalf of
3 respondents: (a) PEP as its managing member; (b) PEP#1 as its managing member; (c) PEP#2 as its
4 managing member; (d) PEP#3 as its managing member; and (e) PEP#4 as its managing member.
5 AUBREY has not been registered as a securities salesman or dealer by the Commission.

6 8. PEP was organized by AUBREY as a Nevada limited liability company on or about
7 June 16, 2005. At all times relevant, PEP maintained a principal place of business in Costa Mesa,
8 California. According to a certified copy of PEP's articles of organization filed with the Nevada
9 Secretary of State ("SOS"), PEP is a manager managed limited liability company. According to
10 certified copies of PEP's member and manager lists provided to the Division by the Nevada SOS,
11 AUBREY has at all times relevant been the managing member of PEP. At all times relevant, PEP
12 conducted business within Arizona, through AUBREY, for its own benefit, and on behalf of PEP#1,
13 PEP#2, PEP#3 and PEP#4 as their manager, "Custodian" and securities "Issuer." PEP has not been
14 registered as a securities dealer by the Commission.

15 9. PEP#1 was organized by AUBREY as a Nevada limited liability company on or
16 about July 29, 2005. At all times relevant, PEP#1 maintained a principal place of business in Costa
17 Mesa, California and conducted business within Arizona. According to a certified copy of PEP#1's
18 articles of organization filed with the Nevada SOS, PEP#1 is a manager managed limited liability
19 company. According to certified copies of PEP#1's member and manager lists provided to the
20 Division by the Nevada SOS, AUBREY has been at all times relevant the managing member of
21 PEP#1. According to PEP#1's operating agreement, its "Custodian" is PEP, and as PEP#1's
22 Custodian, PEP has the "full, exclusive, and complete discretion" to manage and control PEP#1's
23 business and financial affairs. PEP#1 has not been registered as a securities dealer by the
24 Commission.

25 10. PEP#2 was organized by AUBREY as a Nevada limited liability company on or
26 about September 20, 2006. At all times relevant, PEP#2 maintained a principal place of business in

1 Costa Mesa, California and conducted business within Arizona. According to a certified copy of
2 PEP#2's articles of organization filed with the Nevada SOS, PEP#2 is a manager managed limited
3 liability company. According to certified copies of PEP#2's member and manager lists provided to
4 the Division by the Nevada SOS, AUBREY has been at all times relevant the managing member of
5 PEP#2. According to PEP#2's operating agreement, its "Custodian" is PEP, and as its Custodian,
6 PEP has the "full, exclusive, and complete discretion" to manage and control PEP#2's business and
7 financial affairs. PEP#2 has not been registered as a securities dealer by the Commission.

8 11. PEP#3 was organized by AUBREY as a Nevada limited liability company on or
9 about March 7, 2007. At all times relevant, PEP#3 maintained a principal place of business in Costa
10 Mesa, California and conducted business within Arizona. According to a certified copy of PEP#3's
11 articles of organization filed with the Nevada SOS, PEP#3 is a manager managed limited liability
12 company. According to certified copies of PEP#3's member and manager lists provided to the
13 Division by the Nevada SOS, AUBREY has been at all times relevant the managing member of
14 PEP#3. According to PEP#3's operating agreement, its "Custodian" is PEP, and as its Custodian,
15 PEP has the "full, exclusive, and complete discretion" to manage and control PEP#3's business and
16 financial affairs. PEP#3 has not been registered as a securities dealer by the Commission.

17 12. PEP#4 was organized by AUBREY as a Nevada limited liability company on or
18 about August 30, 2007. At all times relevant, PEP#4 maintained a principal place of business in
19 Costa Mesa, California and conducted business within Arizona. According to a certified copy of
20 PEP#4's articles of organization filed with the Nevada SOS, PEP#4 is a manager managed limited
21 liability company. According to certified copies of PEP#4's member and manager lists provided to
22 the Division by the Nevada SOS, AUBREY has been at all times relevant the managing member of
23 PEP#3. According to PEP#4's operating agreement, its "Custodian" is PEP, and as its Custodian,
24 PEP has the "full, exclusive, and complete discretion" to manage and control PEP#4's business and
25 financial affairs. PEP#4 has not been registered as a securities dealer by the Commission.
26

1 13. From December 21, 2005, to 2008, RESPONDENTS offered and sold
2 unregistered securities within Arizona in the form of investment contracts and limited liability
3 company ("LLC") membership interests in PEP#1, PEP#2, PEP#3 and PEP#4 (the "Unit
4 Investment(s)") issued by AUBREY and PEP.

5 14. At all times relevant, RESPONDENTS represented to offerees and investors that
6 they were engaged in the business of developing oil and gas wells located on approximately
7 5,000 acres within Pleasants, Ritchie and Tyler Counties, West Virginia (the "Project").

8 15. At all times relevant, RESPONDENTS represented to offerees and investors that
9 each Unit Investment cost \$25,000. Alternatively, RESPONDENTS offered and sold one half of
10 a Unit Investment for \$12,500, and one quarter of a Unit Investment for \$6,250.

11 16. RESPONDENTS issued and sold a total of eleven separate Unit Investments to
12 eight Arizona residents totaling \$218,750 as follows: (a) AUBREY sold four separate Unit
13 Investments in PEP#1 totaling \$68,750; (b) AUBREY sold three separate Unit Investments in
14 PEP#2 totaling \$50,000; (c) AUBREY sold two separate Unit Investments in PEP#3 totaling
15 \$25,000; and (d) AUBREY sold two Unit Investments in PEP#4 totaling \$75,000.

16 17. RESPONDENTS repaid: (a) \$3,000 to one investor who purchased a full Unit
17 Investment in PEP#1; and (b) a total of \$2,034 to one investor who purchased a half Unit
18 Investment in PEP#2.

19 18. At all times relevant, RESPONDNETS represented to investors that they would
20 pool Unit Investment money together to: (a) drill new oil and gas wells; and (b) re-work existing
21 oil and gas wells for the Project.

22 19. At all times relevant, RESPONDENTS offered and sold the Unit Investments by
23 making unsolicited telephone calls to Arizona residents who had no pre-existing relationship with
24 RESPONDENTS and/or who were unaware of RESPONDENTS and their oil and gas business
25 operations (the "Solicitation(s)").
26

1 20. For example, in late September 2006, AUBREY and PEP caused an unsolicited
2 telephone call to be made to an elderly Arizona resident regarding an opportunity to invest in the
3 Project. This Solicitation was made by a man who represented himself as a "Senior Account
4 Representative" for RESPONDENTS (the "SAR"). During the Solicitation, the SAR informed
5 the Arizona resident that the Unit Investments involved \$25,000 LLC membership interests in
6 PEP#1 and/or PEP#2 and RESPONDENTS' development of the West Virginia oil and gas well
7 Project.

8 21. The SAR explained that each of these Unit Investments would provide the
9 Arizona resident with substantial monthly returns and related tax deductions. The Arizona
10 resident explained to the SAR that because he was retired, he could not afford to purchase an
11 entire Unit Investment. The SAR then told the Arizona resident that he could purchase one half
12 of a Unit Investment in PEP#2 for \$12,500. The Arizona resident agreed, and mailed his check
13 made payable to PEP for \$12,500 to RESPONDENTS' business address at 2060 Placentia Ave.,
14 Suite A5, Costa Mesa, California 92627 on or about October 13, 2006 (the "Business Address").
15 Thereafter, RESPONDENTS caused to be sent to the Arizona investor documentation regarding
16 his purchase of a one half Unit Investment in PEP#2.

17 22. The Unit Investment documentation regarding this investor's purchase of one half
18 of a Unit Investment in PEP#2 is analogous to that sent to the other Arizona investors identified
19 above (collectively the "Documentation"). The Documentation sent by RESPONDENTS to
20 Arizona investors is enclosed in a glossy, two-pocket color folder titled "Progressive Energy
21 Partners, L.L.C. West Virginia" and includes, without limitation, a:

- 22 A. LLC Membership Certificate in the name of either PEP#1, PEP#2, PEP#3 or
23 PEP# 4 signed by AUBREY in her capacity as the "CUSTODIAN" for the LLC;
24 B. "Limited Liability Company Agreement" (the "Operating Agreement(s)") for the
25 LLC;
26 C. a "Private Placement Memorandum" for the LLC (the "PPM(s)"); and

1 D. Inserts and a brochure describing the profits and tax advantages to be had by
2 purchasing the Unit Investments (the "Brochure(s)").

3 23. The Operating Agreements for PEP#1, PEP#2, PEP#3 or PEP# 4 state that PEP is
4 the "Custodian" of the LLC (*i.e.*, PEP#1, etc.), and that:

5 The Custodian shall have full, exclusive, and complete discretion in the management and
6 control of the affairs of the LLC...and shall make all decisions affecting the LLC affairs;
7 including all decisions made regarding the administration, supervision, and management
8 of the LLC's business.

9 24. Each of the PPMs for the Unit Investments in PEP#1, PEP#2, PEP#3 or PEP# 4
10 state that PEP is the Custodian and "Issuer" of the Unit Investments.

11 25. The Operating Agreements and PPMs state that RESPONDENTS and the Unit
12 Investment investors will share the profits generated by the oil and gas well Project as follows:
13 (a) approximately 30 to 35 percent of the profits will go to RESPONDENTS; (b) approximately
14 57 percent will go to the Unit Investment investors; and (c) the remaining profits will go to third-
15 party oil and gas well lease holders.

16 26. The Brochures include photographs of working oil wells, maps and geographical
17 diagrams and various "REASONS TO INVEST IN OIL AND GAS," including: (a) the return of
18 the principal Unit Investment "in as little as 12 to 24 months;" (b) a "Greater than 50% Annual
19 Rate of Return" on the Unit Investment; and (c) the fact that the Unit Investments provided
20 "SIGNIFICANT TAX BENEFITS," including extensive tax deductions.

21 27. The Brochures also include projections stating that each \$25,000 Unit Investment
22 may provide profits of approximately \$23,069 to \$31,377 during the first year of
23 RESPONDENTS' oil and gas business operations. The Brochures further represent that:

24 Progressive Energy Partners goal is a simple one. We intend to make profits for our
25 investors by taking advantage of the 87 existing wells and 10 miles of existing operational
26 gas pipeline obtained by us for the purpose of our gas production.

27 28. At all times relevant, RESPONDENTS have also published information regarding
28 their oil and gas business operations, and information included in the Documentation discussed

1 above including, without limitation, the "REASONS TO INVEST IN OIL AND GAS," on their
2 website at <http://www.pepllc.net>.

3 29. The Unit Investment Documentation, and the articles of organization, Operating
4 Agreements and PPMs discussed above state that RESPONDENTS manage all aspects of the
5 Unit Investments, including the: (a) repair, rework and/or "re-completion" of oil and gas wells,
6 and the construction of new wells for the Project, as warranted; and (b) the marketing and sale of
7 the oil and gas produced by the Project. The Documentation further emphasizes that the success
8 of the oil and gas Project and related Unit Investments will depend on RESPONDENTS' superior
9 knowledge and understanding of oil exploration techniques and strategies.

10 30. The Unit Investment Documentation does not include any audited or unaudited
11 financial statements, or any information regarding RESPONDENTS' possible assets.

12 31. Although RESPONDENTS disclosed the purported benefits of the Unit
13 Investments to the Arizona investors both verbally during Solicitation phone calls, and in writing
14 via the Documentation, RESPONDENTS further failed to adequately disclose to them: (a) a
15 reasonable basis for their projected Unit Investment returns including, without limitation, the
16 nature and extent of RESPONDENTS' investigation and due diligence in determining the
17 projections; and (b) specific risks associated with the oil and gas investments including, but not
18 limited to the fact that the investors could lose all or a vast portion of their Unit Investment
19 money due unforeseen market fluctuations and/or declines, and the fact that the investments were
20 not secured by real or personal property.

21 II.

22 CONCLUSIONS OF LAW

23 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
24 Arizona Constitution and the Securities Act.

25 2. PEP, PEP#1, PEP#2, PEP#3 and PEP#4 were properly served with the Notice on
26 March 25, 2010, pursuant to R14-4-303(E)(3),(4), R14-4-303(G) and A.R.S. § 44-1972.

1 3. Service of the Notice on AUBREY via publication is authorized under A.A.C. Rule
2 R14-4-303(H)(1)(a),(b). Under A.A.C. Rule R14-4-303(H)(2)(a), and the facts set forth in the
3 Division's July 21, 2010, Affidavit, service of the Notice on AUBREY by publication is proper if
4 the Division published a detailed statement regarding the Notice and these administrative
5 proceedings as required by A.A.C. Rule R14-4-303(2)(b) in both Orange County, California and
6 Maricopa County, Arizona once a week for four successive weeks. The Division published the
7 detailed statements regarding the Notice and this matter directed to AUBREY in both Orange
8 County, California and Maricopa County, Arizona as required by law, and AUBREY was properly
9 served with a copy of the Notice via publication on August 28, 2010, pursuant to A.A.C. Rule
10 R14-4-303(H)(3) and A.R.S. § 44-1972.

11 4. RESPONDENTS failed to request a hearing, or file an answer within the required
12 time limits pursuant to A.R.S. § 44-1972, R14-4-305 and R14-4-306, and they are in default.

13 5. RESPONDENTS offered and sold securities within or from Arizona, within the
14 meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

15 6. From December 21, 2005, to 2008, RESPONDENTS violated A.R.S. § 44-1841 by
16 offering or selling securities in the form of investment contracts, and limited liability company
17 membership interests in PEP#1, PEP#2, PEP#3 and PEP#4 that were neither registered nor exempt
18 from registration.

19 7. From December 21, 2005, to 2008, RESPONDENTS violated A.R.S. § 44-1842 by
20 offering or selling securities while neither registered as dealers or salesmen nor exempt from
21 registration.

22 8. RESPONDENTS violated A.R.S. § 44-1991 by (a) employing a device, scheme, or
23 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c)
24 engaging in transactions, practices, or courses of business that operate or would operate as a fraud
25 or deceit. RESPONDENTS' conduct included disclosing to Arizona investors the purported
26

benefits of the Unit Investments, including their purported profit potential, while further failing to disclose to them:

A. A reasonable basis for RESPONDENTS' projected Unit Investment returns including, without limitation, the nature and extent of RESPONDENTS' investigation and due diligence in determining the projections; and

B. Specific risks associated with the oil and gas investments including, but not limited to the fact that the investors could lose all or a vast portion of their Unit Investment money due unforeseen market fluctuations and/or declines, and the fact that the investments were not secured by real or personal property.

9. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

10. RESPONDENTS' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

11. RESPONDENTS' conduct is grounds for administrative penalties under A.R.S. § 44-2036.

III.

ORDER

THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS and any of their agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032 that RESPONDENTS are jointly and severally liable for payment of restitution of the principal amount of \$213,716 plus interest as ordered below. AUBREY and PEP's restitution obligation under this Order will be paid

1 in full upon payment of \$213,716 plus interest. PEP#1's restitution obligation under this Order will
2 be paid in full upon the earlier of: (a) payment by PEP#1 of \$65,750 plus interest; or (b) payment
3 by any RESPONDENT(S) of \$213,716 plus interest. PEP#2's restitution obligation under this
4 Order will be paid in full upon the earlier of: (a) payment by PEP#2 of \$47,966 plus interest; or (b)
5 payment by any RESPONDENT(S) of \$213,716 plus interest. PEP#3's restitution obligation under
6 this Order will be paid in full upon the earlier of: (a) payment by PEP#3 of \$25,000 plus interest;
7 or (b) payment by any RESPONDENT(S) of \$213,716 plus interest. PEP#4's restitution obligation
8 under this Order will be paid in full upon the earlier of: (a) payment by PEP#4 of \$75,000 plus
9 interest; or (b) payment by any RESPONDENT(S) of \$213,716 plus interest. Payment is due in
10 full on the date of this Order. Payment shall be made to the "State of Arizona" to be placed in an
11 interest-bearing account controlled by the Commission. Any principal amount outstanding shall
12 accrue interest at the rate of 10 percent per annum from the date of purchase until paid in full.

13 Interest in the amount of \$49,005 has accrued from the date of purchase to October 7, 2010.
14 Of this amount, as of October 7, 2010: (a) AUBREY and PEP are liable for interest in the amount
15 of \$49,005; (b) PEP#1 is liable for interest in the amount of \$19,724; (c) PEP#2 is liable for interest
16 in the amount of \$11,610; (d) PEP#3 is liable for interest in the amount of \$2,209; and (e) PEP#4 is
17 liable for interest in the amount of \$13,253.

18 The Commission shall disburse the ordered restitution and interest payments paid to the
19 State of Arizona on a pro-rata basis to investors shown on the records of the Commission. Any
20 ordered restitution and interest payments paid to the State of Arizona that the Commission cannot
21 disburse because an investor refuses to accept such payment, or any restitution funds that cannot be
22 disbursed to an investor because the investor is deceased and the Commission cannot reasonably
23 identify and locate the deceased investor's spouse or natural children surviving at the time of the
24 distribution, shall be disbursed on a pro-rata basis to the remaining investors shown on the records
25 of the Commission. Any ordered restitution and interest payments paid to the State of Arizona that
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1 the Commission determines it is unable to or cannot feasibly disburse shall be transferred to the
2 general fund of the state of Arizona.

3 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS shall
4 jointly and severally pay an administrative penalty in the amount of \$50,000. Payment shall be
5 made to the "State of Arizona." Payment shall be made to the "State of Arizona." Any amount
6 outstanding shall accrue interest as allowed by law.

7 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
8 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
9 shall be applied to the penalty obligation.

10 For purposes of this Order, a bankruptcy filing by any of the Respondents shall be an act of
11 default. If any Respondent does not comply with this Order, any outstanding balance may be
12 deemed in default and shall be immediately due and payable.

13 IT IS FURTHER ORDERED, that if any Respondent fails to comply with this order, the
14 Commission may bring further legal proceedings against that Respondent, including application to
15 the superior court for an order of contempt.

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IT IS FURTHER ORDERED that, if any of the RESPONDENTS fail to comply with this order, the Commission may bring further legal proceedings against the RESPONDENTS, including application to the superior court for an order of contempt.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of October, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(MD)

1 SERVICE LIST FOR: *In re Carol Dee Aubrey, et al.*, Docket No. S-20723A-10-0042

2 Carol Dee Aubrey

3 Progressive Energy Partners, L.L.C.

4 Progressive Energy Partners, L.L.C. #1

5 Progressive Energy Partners, L.L.C. #2

6 Progressive Energy Partners, L.L.C. #3

7 Progressive Energy Partners, L.L.C. #4

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9 Santa Ana, CA 92705

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